

# WOOD, HERRON & EVANS, LLP

BRUCE TITTEL  
DAVID S. STALLARD  
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BEVERLY A. LYMAN, Ph.D.  
KRISTI L. DAVIDSON  
KATHRYN E. SMITH  
P. ANDREW BLATT, Ph.D.  
DAVID E. JEFFERIES

2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OHIO 45202-2917

TELEPHONE: 513-241-2324

FACSIMILE: 513-241-6234

WEBSITE: www.whopatent.com

PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968  
TRUMAN A. HERRON 1935-1976  
EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN  
C. RICHARD EBY

WILLIAM R. ALLEN, Ph.D.  
JOHN PAUL DAVIS  
DOUGLAS A. SCHOLER  
BRETT A. SCHATZ  
DAVID W. DORTON  
SARAH OTTE GRABER  
STEVEN W. BENINTENDI, Ph.D.  
RANDALL S. JACKSON, JR.  
CARL J. BRAUCH

OF COUNSEL  
JOHN D. POFFENBERGER  
DAVID J. JOSEPHIC  
DONALD F. FREI  
THOMAS W. FLYNN  
J. DWIGHT POFFENBERGER, JR.  
BRADLEY D. BECK

December 21, 2006

**TTAB**

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Opposition No. 91165809  
Triforest Enterprises, Inc. v. Nalge Nunc International Corporation  
Application Serial No. 76/572,253

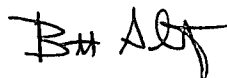
Dear Madam:

Enclosed find the following with respect to the above-referenced matter:

1. Applicant Nalge Nunc International Corporation's Notice of Filing Deposition Transcript of Robert Cross;
2. Deposition Transcript of Robert Cross; and
3. First-Class Mail Certification and postcard.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Brett A. Schatz

BAS:alf

Enclosures

cc: Theodore R. Remaklus, Esq. (w/o Enclosures)  
Sarah Otte Graber, Esq. (w/o Enclosures)

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12-26-2006

U.S. Patent & TMO/c/TM Mail Rpt Dt. #22

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<u>In re Application, Serial No. 76/572,253</u>	)	
TriForest Enterprises, Inc.	)	
	)	Opposition No. 91165809
Opposer,	)	
v.	)	
	)	
Nalge Nunc International Corporation	)	
	)	
Applicant-Respondent.	)	
_____	)	

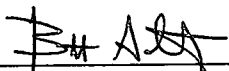
Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S  
NOTICE OF FILING DEPOSITION TRANSCRIPT  
OF ROBERT CROSS**

Applicant Nalge Nunc International Corporation hereby submits to the Trademark Trial and Appeal Board a certified copy of the deposition transcript of Robert Cross, pursuant to Trademark Trial and Appeal Board Manual of Procedures, Rule 37 C.F.R. § 2.125. An appropriate copy has previously been served upon Opposer, TriForest Enterprises, Inc.

Respectfully submitted,

Dated: December 21, 2006

  
\_\_\_\_\_  
Theodore R. Remaklus, Esq.  
Brett A. Schatz, Esq.  
Sarah Otte Graber, Esq.  
WOOD, HERRON & EVANS, L.L.P.  
441 Vine Street, 2700 Carew Tower  
Cincinnati, Ohio 45202  
(513) 241-2324  
Attorneys for Applicant  
Nalge Nunc International Corporation

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid in an envelope addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, P.O. Box, 1451, Alexandria, VA 22313-1451, on December 21, 2006.

A handwritten signature in cursive script, reading "Anita L. Freeman", is written over a horizontal line.

Anita L. Freeman

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S NOTICE OF FILING DEPOSITION TRANSCRIPT OF ROBERT CROSS** was served by United States Postal Service as First Class Mail, postage prepaid, upon counsel for Opposer TriForest Enterprises, Inc., Clement Cheng, Esq., Law Offices of Clement Cheng, 17220 Newhope Street, Suite 127, Fountain Valley, California 92708, on this 21<sup>st</sup> day of December, 2006. The deposition transcript of Robert Cross was previously served upon counsel for Opposer TriForest Enterprises, Inc., Clement Cheng, Esq., on October 6, 2006.

  
\_\_\_\_\_

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**Copy of Transcript**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TRIFOREST ENTERPRISES,

Plaintiff,

vs.

No. 91165809

NALGE NUNC, INTERNATIONAL  
CORPORATION,

Defendant.

---

**DEPOSITION OF**

**ROBERT C. CROSS**

September 25, 2006  
1:31 p.m.

Equinox  
1307 Park Avenue  
Williamsport, PA 17701

Lisa L. Rivera-Smith, RPR, Notary Public



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**APPEARANCES:****FOR - PLAINTIFF**

NONE PRESENT

**FOR - DEFENDANT****WOOD, HERRON & EVANS, L.L.P.****BRETT A. SCHATZ, ESQUIRE**

2700 Carew Tower

441 Vine Street

Cincinnati, OH 45202-2917

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Deposition of Robert C. Cross

September 25, 2006

ROBERT C. CROSS, called as a  
witness, being sworn, testified as follows:

**EXAMINATION****BY-MR. SCHATZ:**

Q. Could you please state your name  
for the record?

A. Robert Cross.

Q. Mr. Cross, who do you work for?

A. I work for Equinox, LTD.

Q. And how long have you worked for  
Equinox?

A. Just over 20 years.

Q. What's your title at Equinox?

A. President.

Q. And how long have you been the  
president of Equinox?

A. Just over 20 years.

Q. That makes it easy. Is part of  
Equinox's business buying and selling water  
bottles?

A. It is, a very important part.

Q. And tell me for how long has  
Equinox been buying and selling water bottles?

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1           A.       I believe from the beginning. I  
2 think we've had a 20-year relationship with  
3 our most important supplier, which is Nalgene.

4           Q.       And do you have other suppliers of  
5 water bottles?

6           A.       We -- we do, but they're pretty  
7 much insignificant compared with the business  
8 we do with Nalgene.

9           Q.       Would you consider yourself  
10 knowledgeable about the water bottle industry  
11 as far as selling water bottles?

12          A.       I think so, yes.

13          Q.       And is that based on your 20 years  
14 of experience?

15          A.       Yes, and the fact that I use them  
16 in the field as well.

17          Q.       And would you say that you're  
18 familiar with Nalgene water bottles?

19          A.       Yes.

20          Q.       Are you familiar with water bottles  
21 that compete with Nalgene?

22          A.       To some extent.

23          Q.       Based on your experience in water  
24 bottles, would you say that Nalgene is  
25 recognized as a leader in the industry for



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1 selling water bottles?

2 A. Yes. Probably not a leader, the  
3 leader.

4 Q. So people that use water bottles  
5 know the Nalgene name?

6 A. Yes.

7 Q. And what do you base that on? Do  
8 you base that on your knowledge of Nalgene  
9 sales, advertising? What are the types of  
10 the things that you base your opinion on that  
11 Nalgene is the leader in the industry?

12 A. Demand from our clientele for --  
13 for that bottle and we deal with three to  
14 four hundred active retail accounts and a few  
15 hundred more that are not so active, and  
16 visiting those accounts and seeing what they  
17 do in their store.

18 Q. So these accounts, they're  
19 customers of Equinox?

20 A. Retail stores, that's right.

21 Q. Okay. And they are I'm assuming  
22 asking Equinox for Nalgene bottles in  
23 particular?

24 A. Yes.

25 Q. Okay. So your customers demand of



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1 you Nalgene water bottles?

2 A. That's correct.

3 Q. Okay. Does that include what is  
4 known as the Nalgene narrow mouth bottle?

5 A. It does.

6 (Exhibit No. 16 previously marked  
7 for identification.)

8 BY MR. SCHATZ:

9 Q. Okay. Let me -- let me show you  
10 what has been previously marked in this case  
11 as Exhibit 16. Do you recognize Exhibit 16  
12 as the Nalgene narrow mouth water bottle?

13 A. Yes, it sure looks like it.

14 Q. Based on your experience in the  
15 industry, would you say that the water bottle  
16 made to look like Exhibit 16 if it's a  
17 legitimate water bottle is a Nalgene narrow  
18 mouth water bottle?

19 A. I would say so. I mean I would  
20 say that's what most people would assume if  
21 they saw a bottle like that.

22 Q. Okay. So you would have a mental  
23 association between Exhibit 16 and Nalgene?

24 A. Yes.

25 Q. And would you say that your retail



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1 customers would make that same association?

2 A. I think so.

3 (Exhibit No. 15 previously marked  
4 for identification.)

5 BY MR. SCHATZ:

6 Q. I'm going to pass to you what has  
7 been previously marked as Exhibit 15. And  
8 take a look at that. Keep Exhibit 16 out  
9 because we're going to make some comparisons  
10 or contrasts to those two exhibits. Taking a  
11 look at Exhibit 15, and let's look at the  
12 bottle to the left of Exhibit 15, would --  
13 in your opinion does the bottle to the left  
14 of Exhibit 15 look different than Exhibit 16?

15 A. A little bit.

16 Q. And would you say one of the  
17 reasons for that is because the cap of the  
18 bottle to the left on Exhibit 15 looks  
19 different?

20 A. Yeah.

21 Q. How -- how would you say it looks  
22 different?

23 A. It has a -- it appears to have a  
24 slightly wider attachment and a rounded top  
25 on the cap.



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1 Q. Would you say -- are you familiar  
2 with the fact that there is two annular rings  
3 to -- associated with the bottle to the left  
4 of Exhibit 15?

5 A. Two --

6 Q. Two annular rings, two connected by  
7 a tether.

8 A. Uh-huh. Yeah.

9 Q. Just so the court reporter can  
10 take that down, just say yes or no.

11 A. Yes. Yes.

12 Q. Okay. And looking at the annular  
13 ring at the top of the bottle to the left of  
14 Exhibit 15, would you say that that connects  
15 to the cap in a way that looks different  
16 than Exhibit 16?

17 A. Yes.

18 Q. And why don't you describe that in  
19 your own words, how does that look different?

20 A. It appears that it attaches at the  
21 outer circumference of the cap as opposed to  
22 the center of the cap.

23 Q. And would you say also that the  
24 ring associated with Exhibit 16 attaches to  
25 the very top of the cap as opposed to maybe



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1 the side surface of the cap on Exhibit 15?

2 A. Yeah. Yeah, the center as opposed  
3 to the periphery.

4 Q. Let me ask you a few questions  
5 about the bottle in the middle of Exhibit 15.  
6 Would you say that the bottle at the middle  
7 of Exhibit 15 looks different than the bottle  
8 depicted in Exhibit 16?

9 A. Yeah, I would say so.

10 Q. And why would you say that?

11 A. The shape seems a little different.  
12 The shape of the bottle seems different. The  
13 cap seems to be a bit bigger. There is a  
14 similarity, but there -- there's also some  
15 modest differences.

16 Q. Would you say that the slope of  
17 the shoulders appears different?

18 A. Yes.

19 Q. And how so?

20 A. There is a longer gradient from  
21 the shoulder to the -- to the cap area than  
22 in the traditional Nalgene narrow mouth.

23 Q. With respect to the two bottles we  
24 looked at in Exhibit 15, that is the one on  
25 the left and the one in the middle, have you



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1       seen bottles that look like those bottles  
2       before?

3           A.       Yeah, I'm sure I have.

4           Q.       Would you say that those two  
5       bottles are designed to function as water  
6       bottles?

7           A.       I would -- I would say so.

8                   (Exhibit No. 19 previously marked  
9       for identification.)

10          BY MR. SCHATZ:

11          Q.       I'm going to pass to you what has  
12       been marked as Exhibit 19. And what are  
13       your thoughts regarding the design of the  
14       water bottle in Exhibit 19 versus Exhibit 16?

15          A.       I'd say it's more -- more  
16       different than the -- than any in Exhibit 15,  
17       a wider cap and an unusual body shape on the  
18       bottle I suppose to enhance your ability to  
19       grab the bottle.

20          Q.       And would you say that Exhibit 19  
21       is designed to serve as a water bottle?

22          A.       I would -- that would be my guess,  
23       yeah.

24                   (Exhibit No. 20 previously marked  
25       for identification.)

1 BY MR. SCHATZ:

2 Q. And let me ask you the same  
3 questions with respect to the bottle depicted  
4 in Exhibit 20.

5 A. Yeah. Again, considerably  
6 different body shape and cap shape from that  
7 in Exhibit 16.

8 Q. So Exhibit 20 and Exhibit 16 look  
9 significantly different?

10 A. Yes.

11 Q. Based on your experience in selling  
12 water bottles, what would you say is the  
13 purpose of the -- what I'll call a narrowing  
14 slope of the bottle depicted in Exhibit 20;  
15 that is, the narrowing slope as it  
16 approaches --

17 A. Looks like it's designed to fit  
18 into a coffee cup holder.

19 Q. So would you say that the bottle  
20 depicted in Exhibit 20 would fit in some type  
21 of cup holder better than Exhibit 16?

22 A. Yes.

23 (Exhibit No. 22 previously marked  
24 for identification.)

25 BY MR. SCHATZ:



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1 Q. Same questions with respect to  
2 Exhibit 20. What would you say are the  
3 differences between Exhibit 22 and Exhibit 16?

4 A. Different -- little bit different  
5 body shape. It appears -- not a very good  
6 photograph, but it appears that there is a  
7 change in the shape midway in the -- in the  
8 bottle that would give it a little bit of a  
9 different look. Somewhat different cap although  
10 not too much different than 16.

11 Q. Would you say that the shoulder of  
12 Exhibit 22 looks different than the shoulder  
13 of Exhibit 16?

14 A. A little bit different, yeah.

15 Q. And how so?

16 A. It seems -- it seems to have  
17 almost a flat shelf-like shoulder. The  
18 Nalgene bottle is sloped a little bit.

19 Q. And you referred to an indentation  
20 associated with the body portion of Exhibit  
21 22. Do you see that that causes a narrowing  
22 of the body of the bottle?

23 A. In the lower portion, yes, it  
24 looks like it.

25 Q. And do you have any thoughts as to



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1 what purpose that serves?

2 A. Again it looks like it's designed  
3 to give -- to make it a little easier to  
4 hold in your hand.

5 (Exhibit No. 23 previously marked  
6 for identification.)

7 BY MR. SCHATZ:

8 Q. And same questions with respect to  
9 23, Exhibit 23 that is.

10 A. Oh, yeah, that's considerably  
11 different.

12 Q. And how so?

13 A. It has a unique configuration on  
14 the side, again, probably made to allow the  
15 hand to hold it without slipping, but it  
16 almost looks bizarre.

17 Q. Would you say that Exhibit 23  
18 could be compressed based on the accordion  
19 style look?

20 A. Yeah, it -- it has that  
21 appearance. Yes.

22 Q. And would you say that Exhibit 23  
23 would function as a water bottle?

24 A. I'm guessing that would -- that's  
25 what it would be used for.



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1 (Exhibit No. 24 previously marked  
2 for identification.)

3 BY MR. SCHATZ:

4 Q. Same question with respect to  
5 Exhibit 24. Let's talk about whether you  
6 believe Exhibit 24 looks different than  
7 Exhibit 16.

8 A. Yeah, it has indentations on the  
9 body giving it a different look and the cap  
10 seems wider, a little different configuration.

11 Q. And what would you say the  
12 indentations in the body of Exhibit 24 are  
13 for?

14 A. Easier -- easier handling.

15 (Exhibit No. 28 previously marked  
16 for identification.)

17 BY MR. SCHATZ:

18 Q. How about Exhibit 28?

19 A. I had no idea all these water  
20 bottles existed. Yeah, 28 has a bit of a  
21 different body shape. Towards the bottom it  
22 seems to go in, again, maybe to make it fit  
23 into a cup holder, a little different  
24 shoulder design and a slightly different cap  
25 design than the Nalgene.



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1 Q. So Exhibit 28 looks different than  
2 Exhibit 16?

3 A. It does.

4 (Exhibit No. 32 previously marked  
5 for identification.)

6 BY MR. SCHATZ:

7 Q. Passing you what's been marked as  
8 Exhibit 32. And in your opinion, does Exhibit  
9 32 look different than Exhibit 16?

10 A. Yes.

11 Q. And how so?

12 A. It appears to have an indentation  
13 in the body itself and a rubber insert, again  
14 I suppose to make it easier to hold and  
15 drink from, and the cap configuration is  
16 different as well.

17 Q. Do you see the two annular rings  
18 that are tethered to the cap of Exhibit 32?

19 A. Yes.

20 Q. And give me your thoughts relative  
21 to the top annular ring of Exhibit 32 versus  
22 that of Exhibit 16.

23 A. Looks like it might be a little  
24 easier to use, this configuration, than 16.  
25 I'm not sure it's a dramatic difference, but



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1 it looks like -- it looks like it might --  
2 although -- it depends on whether there's  
3 enough friction on the top of this cap as to  
4 whether you can turn it very easily. There  
5 is -- there is on the Nalgene cap some good  
6 friction, but this it would appear you were  
7 not -- you would not get interfered with by  
8 the loop, the plastic loop itself.

9 Q. Just to clarify that for the  
10 record, I'll explain that and you tell me if  
11 what I'm saying accurately reflects what you  
12 were saying. The -- it appears that the top  
13 annular ring of Exhibit 32 connects to the  
14 lower portion of the cap whereas the top  
15 annular ring of Exhibit 30 -- of Exhibit 16  
16 attaches to the very top of the cap?

17 A. Correct.

18 Q. So if you were to manipulate open  
19 the cap of Exhibit 32, you may be able to do  
20 so from the top of the bottle and rotate the  
21 cap without having the tether hit your hand?

22 A. Correct.

23 Q. And would you say just the way the  
24 top annular ring connects to the cap of  
25 Exhibit 32 looks different than that of



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1 Exhibit 16?

2 A. Oh, yes.

3 (Exhibit No. 33 previously marked  
4 for identification.)

5 BY MR. SCHATZ:

6 Q. Same questions for Exhibit 33.

7 A. Different -- different body shape,  
8 indentations to enable easier handling. I  
9 can't exactly tell what's going on with the  
10 cap, but it certainly is different than --  
11 than figure 16 and it's more -- looks like  
12 more of a wide mouth than a narrow mouth  
13 also, but --

14 (Exhibit No. 34 previously marked  
15 for identification.)

16 BY MR. SCHATZ:

17 Q. And same questions for Exhibit 34.

18 A. Yeah, the body itself looks similar  
19 -- very similar to a Nalgene wide mouth  
20 bottle. The cap is a little different.

21 Q. What about Exhibit 34 with respect  
22 to Exhibit 16; that is, Nalgene's narrow  
23 mouth bottle?

24 A. Considerably different.

25 (Exhibit No. 35 previously marked



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1 for identification.)

2 BY MR. SCHATZ:

3 Q. And Exhibit 35?

4 A. A little goofy looking and not --  
5 not very much like 16, especially the cap  
6 configuration.

7 Q. There's like a domed cap  
8 configuration?

9 A. Indeed. And it -- yeah, it looks  
10 strange actually. And it also looks like it  
11 may be metal rather than plastic that I'm  
12 more used to.

13 Q. The lower or bottom portion of  
14 Exhibit 35, does that look different than  
15 Exhibit 16?

16 A. There is a -- a bit of a  
17 different configuration I think to it.

18 Q. And how so?

19 A. The shoulders have a different  
20 gradient, at least it appears to me that it  
21 does, and again it looks like metal, and  
22 shapewise I suppose it's fairly similar except  
23 for the shoulder.

24 Q. What about the very bottom of  
25 Exhibit 35, and specifically the slope



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1 associated with the bottom portion?

2 A. Yeah, there is a difference there.  
3 It's a little more subtle, but there is a  
4 difference there.

5 (Exhibit No. 36 previously marked  
6 for identification.)

7 BY MR. SCHATZ:

8 Q. Same questions for Exhibit 36.

9 A. Dramatically different, canteen  
10 shaped, cap different. The whole thing is  
11 different. No mistaking those two.

12 Q. And same questions for Exhibit 37.

13 (Exhibit No. 37 previously marked  
14 for identification.)

15 BY MR. SCHATZ:

16 A. Same thing, dramatically different  
17 shape.

18 Q. Have you ever seen a physical  
19 bottle looking like Exhibit 37?

20 A. No. I don't think so. I've seen  
21 a lot of bottles, but I don't think I've  
22 seen that.

23 (Exhibit No. 39 previously marked  
24 for identification.)

25 BY MR. SCHATZ:



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1 Q. I'll ask you some similar questions  
2 with respect to Exhibit 39. Would you say  
3 that the body portion of Exhibit 39 looks  
4 different than Exhibit 16?

5 A. I would. Indentations again for  
6 easier gripping.

7 Q. And would you say that the cap of  
8 Exhibit 39 looks different than Exhibit 16?

9 A. Yes, much, much wider, comes almost  
10 out to the full lip of the -- of the  
11 shoulder. Probably could be easier to grab.  
12 It depends on how slippery the top is, but a  
13 much bigger, more bulbous top on it.

14 (Exhibit No. 41 previously marked  
15 for identification.)

16 BY MR. SCHATZ:

17 Q. Passing you what's been marked as  
18 Exhibit 41. Here's another page of Exhibit 41  
19 just so you can see different views of it.  
20 And would you say that Exhibit 41 is  
21 different in appearance than Exhibit 16?

22 A. Oh, yes. Different shoulder, neck,  
23 and the body itself looks quite a bit --  
24 quite a bit different and the cap looks  
25 dramatically different.



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1 Q. With respect to the cap, is it  
2 fair to describe that as having kind of a  
3 sliding mechanism to get access to the water?

4 A. I would say that's accurate.

5 Q. And that looks different than  
6 Exhibit 16?

7 A. Dramatically.

8 (Exhibit No. 42 previously marked  
9 for identification.)

10 BY MR. SCHATZ:

11 Q. Are you familiar with Exhibit 42?

12 A. I am.

13 Q. And would you say that -- first of  
14 all, does Exhibit 42 function as a water  
15 bottle?

16 A. It does.

17 Q. Does it look different than Exhibit  
18 16?

19 A. It does.

20 Q. And how so?

21 A. A little more cylindrical, narrow  
22 body and a dramatically different cap.

23 Q. Does the cap also have like a  
24 sliding mechanism where the cap can rotate  
25 around a --



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1 A. No, it just -- it pops up with  
2 your thumb.

3 Q. So it's a flip-top style?

4 A. Yeah.

5 Q. And that obviously looks different  
6 than Exhibit 16?

7 A. Yes.

8 (Exhibit No. 46 previously marked  
9 for identification.)

10 BY MR. SCHATZ:

11 Q. I'm going to pass you what we have  
12 previously marked as Exhibit 46 and could you  
13 rotate the cap of Exhibit 46 for me?

14 A. (Witness complies.)

15 Q. Okay. Now, would you say -- first  
16 of all, would Exhibit 46 serve as a water  
17 bottle?

18 A. It could, yeah.

19 Q. And would you say that the cap of  
20 Exhibit 46 rotates independently of the  
21 tether?

22 A. Yes.

23 Q. Would you say that the cap of  
24 Exhibit 46 twists off relatively easily?

25 A. Yes.



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1 (Exhibit No. 47 previously marked  
2 for identification.)

3 BY MR. SCHATZ:

4 Q. I'm going to ask you to do the  
5 same thing with respect to Exhibit 47.

6 A. (Witness complies.)

7 Q. Would you say that it's easier to  
8 unscrew the cap of Exhibit 46 or Exhibit 47?

9 A. A little easier to unscrew 46.

10 Q. And why is that?

11 A. Because the tether doesn't get in  
12 your way.

13 Q. Whereas with Exhibit 47 it does?

14 A. It's a little bit of an  
15 inconvenience.

16 Q. Specifically how so?

17 A. It goes against your hand when  
18 you're trying to do it. It makes it -- it's  
19 a little more cumbersome to get the cap off.

20 Q. And --

21 A. I've been doing it for enough  
22 years that I can do it, but it's a little  
23 more cumbersome.

24 Q. That is, unscrewing Exhibit 47 is  
25 more cumbersome?



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1 A. Correct.

2 (Exhibit No. 48 previously marked  
3 for identification.)

4 BY MR. SCHATZ:

5 Q. I'm going to pass to you what's  
6 been marked as Exhibit 48. And if you could  
7 rotate the cap off of Exhibit 48.

8 A. (Witness complies.) Uh-huh.

9 Q. And in your opinion, does the cap  
10 of Exhibit 48 rotate independently of the  
11 tether?

12 A. It seems to, yeah.

13 Q. Would you say that the cap of  
14 Exhibit 48 rotates more independently of the  
15 tether than does Exhibit 47?

16 A. I would say so.

17 Q. So is Exhibit 48 a little bit  
18 easier to open?

19 A. A little bit.

20 (Exhibit No. 49 previously marked  
21 for identification.)

22 BY MR. SCHATZ:

23 Q. And passing you what's been marked  
24 as Exhibit 49. And if you could manipulate  
25 that open.



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1 A. (Witness complies.)

2 Q. Okay. Would you say that Exhibit  
3 49 is -- or can be used as a water bottle?

4 A. Yes.

5 Q. And can you access fluid in  
6 Exhibit 49 faster Exhibit 47?

7 A. Yes.

8 Q. And why is that?

9 A. Because you just flip this top  
10 over with your finger and you've got access  
11 to fluid, straw mechanism.

12 (Exhibit No. 50 previously marked  
13 for identification.)

14 BY MR. SCHATZ:

15 Q. And I think you mentioned you were  
16 familiar with Exhibit 50?

17 A. Yep.

18 Q. If you could just manipulate that  
19 open.

20 A. (Witness complies.) On the go  
21 bottle, uh-huh.

22 Q. And would you say that you can  
23 access fluid faster in Exhibit 50 than  
24 Exhibit 47?

25 A. Yes.



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1 Q. Is that -- is there also no  
2 interference with any type of tether when  
3 you're manipulating Exhibit 50?

4 A. That's correct. There's no tether.  
5 A simple thumb mechanism and you've got it.

6 (Exhibit No. 51 previously marked  
7 for identification.)

8 BY MR. SCHATZ:

9 Q. And then let me pass to you what's  
10 been marked as Exhibit 51. Take a look at  
11 that for a minute and if you could manipulate  
12 that for me.

13 A. (Witness complies.)

14 Q. With respect to Exhibit 51, in  
15 your opinion can you manipulate the cap open  
16 without having the tether hit you in the  
17 hand?

18 A. Yes.

19 Q. And does that make it a little bit  
20 easier than Exhibit 47 to open?

21 A. It does, yes.

22 Q. Of the exhibits you have in front  
23 of you, that is, Exhibits 46 through 51,  
24 would you say that they serve at least as  
25 equally as well as water bottles?



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1           A.           That these five serve as well as  
2 this (indicating)?

3           Q.           Let's do that. Let me ask it  
4 that way. That's fine. Would you say that  
5 Exhibits 46, 48, 49, 50 and 51 serve at  
6 least as well as water bottles as Exhibit 47  
7 or function as well as water bottles?

8           A.           It's hard for me to say, but in  
9 terms -- in terms of access, since that  
10 seemed to be what you were talking about  
11 here, in terms of access they certainly  
12 function as well or better. There is -- I  
13 mean my belief in the benefit of a Nalgene  
14 bottle is it doesn't leak. I don't know if  
15 these other bottles leak. So that's -- that  
16 would -- that's questions, but in terms of  
17 being able to access the liquid itself, I'd  
18 say they certainly function as well if not  
19 better.

20                       MR. SCHATZ: Mr. Cross, thank you  
21 very much for your time. That's all I got.

22                       (The deposition was concluded at  
23 2:07 p.m.)

24                       (Exhibit Nos. 46 - 51 retained by  
25 Mr. Schatz.)

## DESCRIPTION OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
16	WATER BOTTLE DRAWING
15	PICTURE OF WATER BOTTLES
19	PICTURE OF WATER BOTTLE
20	PICTURE OF WATER BOTTLES
22	PICTURE OF WATER BOTTLE
23	PICTURE OF WATER BOTTLE
24	PICTURE OF WATER BOTTLE
28	PICTURE OF WATER BOTTLE
32	PICTURE OF WATER BOTTLE
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42	PICTURES OF WATER BOTTLE
46	WATER BOTTLE
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48	WATER BOTTLE
49	WATER BOTTLE
50	WATER BOTTLE
51	WATER BOTTLE

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COUNTY OF CENTRE:

: ss

COMMONWEALTH OF PENNSYLVANIA:

I, LISA L. RIVERA-SMITH, RPR-Notary Public, authorized to administer oaths within and for the Commonwealth of Pennsylvania and take depositions in the trial of causes, do hereby certify that the foregoing is the testimony of ROBERT C. CROSS.

I further certify that before the taking of said deposition, the witness was duly sworn; that the questions and answers were taken down stenographically by the said LISA L. RIVERA-SMITH, a RPR-Notary Public, approved and agreed to, and afterwards reduced to typewriting under the direction of the said Reporter.

I further certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the within deposition, and that this copy is a correct transcript of the same.



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1 In testimony whereof, I have  
2 hereunto subscribed my hand this 3rd day of  
3 October, 2006.

4   
5 LISA L. RIVERA-SMITH, RPR  
6 Notary Public

7 NOTARIAL SEAL  
8 LISA L. RIVERA-SMITH, Notary Public  
9 Bellefonte, Centre County, PA  
10 My Commission Expires Mar. 24, 2007

11 My commission expires on March 24, 2007  
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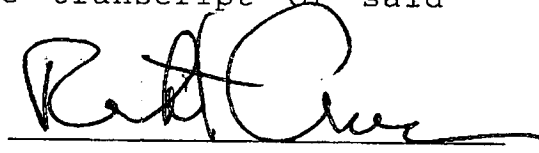
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CERTIFICATE

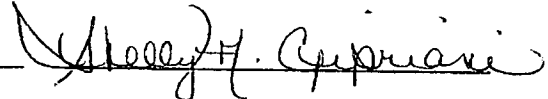
STATE OF Pennsylvania :  
COUNTY/CITY OF Lycoming / Williamsport :

Before me, this day, personally  
appeared, **Robert C. Cross**, who, being duly  
sworn, states that the foregoing transcript  
of his/her Deposition, taken in the matter,  
on the date, and at the time and place set  
out on the title page hereof, constitutes a  
true and accurate transcript of said  
deposition.



**Robert C. Cross**

SUBSCRIBED and SWORN to before me this  
26 day of October, 2006 in the  
jurisdiction aforesaid.



My Commission Expires

Notary Public

Shelly A. Cipriani



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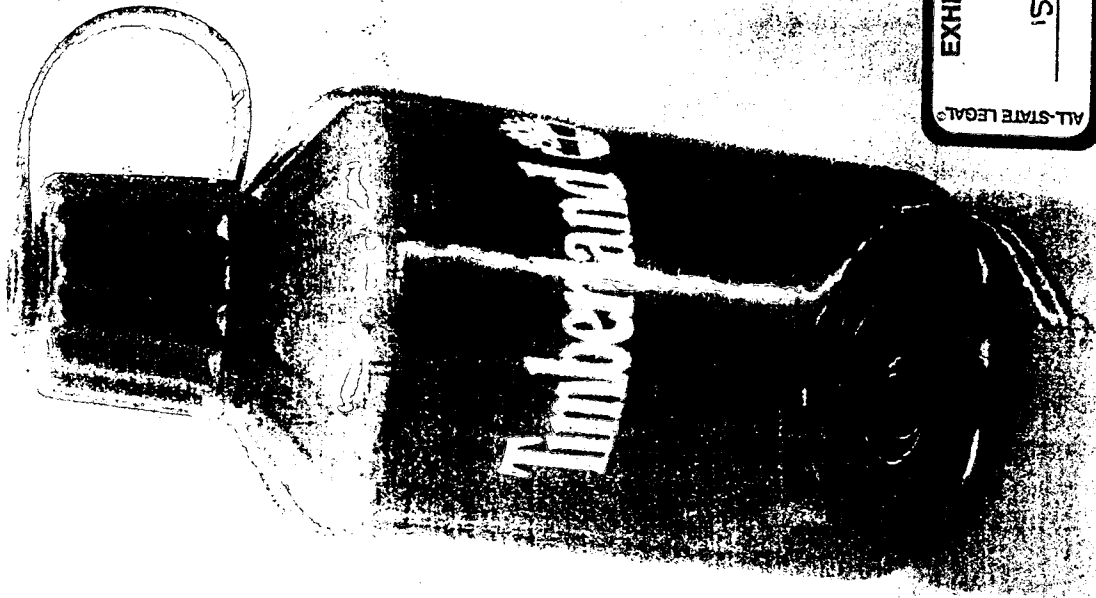
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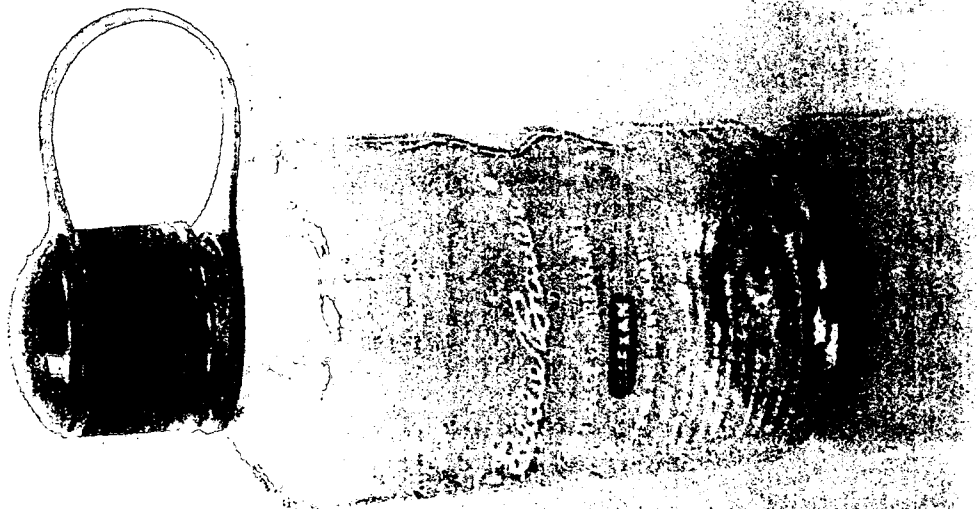
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# Example of Tether Cap on Motion Round Bottles

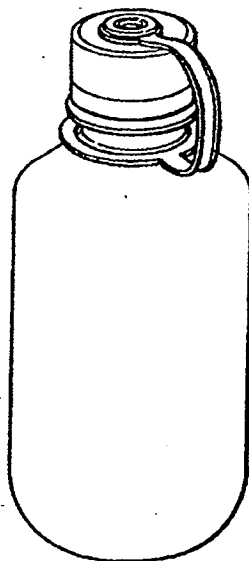


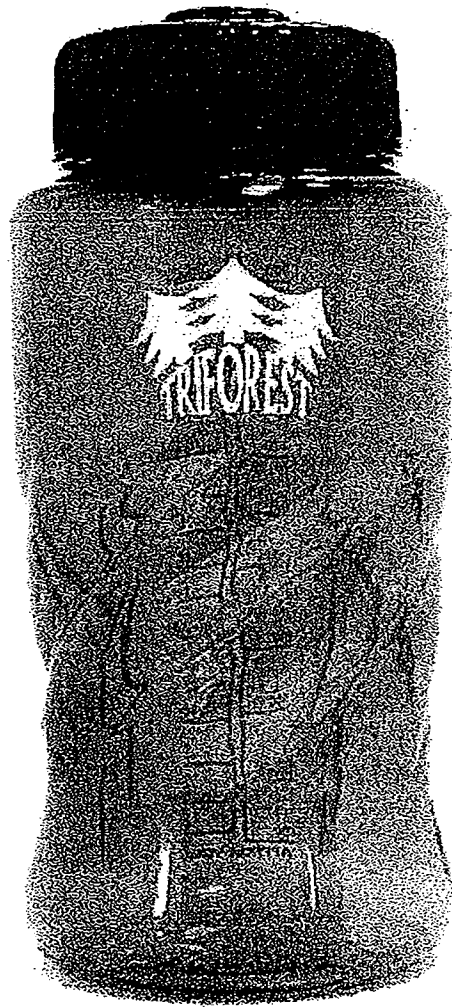
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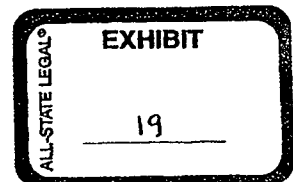
Serial No. 76/572,253  
THE CONFIGURATION OF A  
PLASTIC WATER BOTTLE, SOLD  
EMPTY





Triforest Ent v. Nalgene  
Position No. 91165809  
Serial No. 76/572,253  
Applicant Nalgene Nunc Int'l Inc Exhibit 19

[http://www.triforest.com/Products/t-tol\\_large.jpg](http://www.triforest.com/Products/t-tol_large.jpg)



7/17/2006



### Introducing TriForest Crystal Cut Bottles

Available in 4 colors in the 750 ml size with limited edition silver cap and screen print. Click on the pictures below to see the enlarged version.

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About Us

Lexan Outdoor Bottles

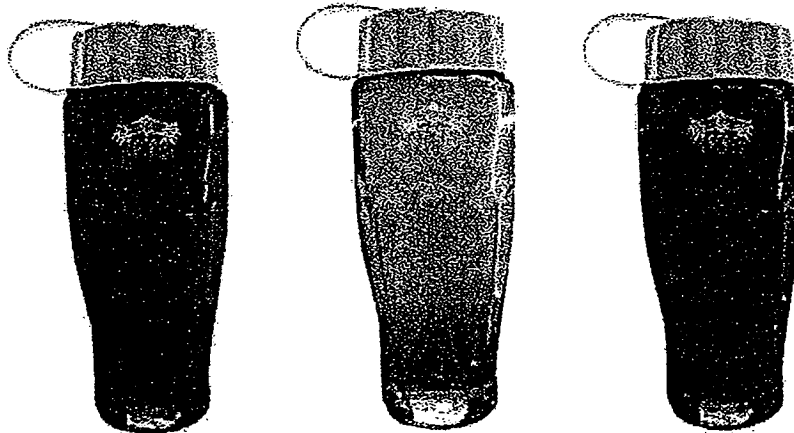
Accessories

Distributors

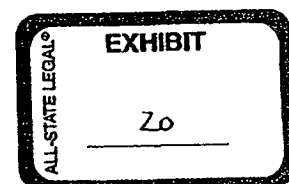
Lab Bottles

Contact

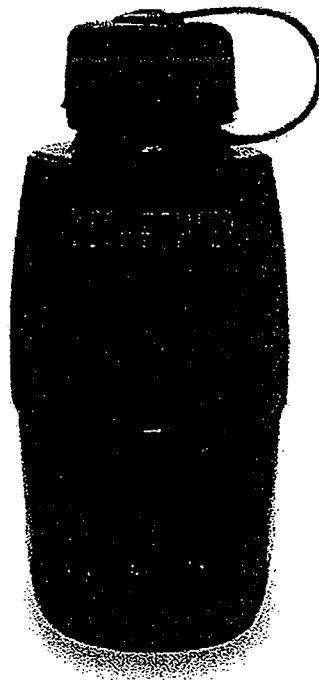
Home



Triforest Ent v. Nalgene  
Position No. 91165809  
Serial No. 76/S72,253  
Applicant Nalge Nunc Int'l Inc Exhibit 20



## #5190: The Journeyer 34 oz. Polycarbonate Bottle



- ⊗ Giant 34 oz. capacity!
- ⊗ Loop top design
- ⊗ Matching color lids
- ⊗ Measurement guide on back

We think you'll take one look at this great polycarbonate bottle and start thinking about how to use it for your next promotion. The Journeyer just invites a dramatic imprint on a beautiful color selection and the contoured design is perfect for comfort. Your lucky recipients will be anxious to hook the bottle onto belt or backpack and hit the trail. With a 34 ounce capacity, they'll be able to trek a long ways without a refill. Through it all, your logo will accompany them, reminding all of your services and generosity.

Item Number	72	144	288	596	1,008
5190	\$5.50	\$5.20	\$5.00	\$4.80	\$4.60

**Set-up charge:** \$45.00

**Running charges:** Price includes per piece running charge for one-color imprint on one or both sides

**Dimensions:** 8 3/4" high by 4" diameter (top) by 3 3/4" diameter (bottom)

**Imprint area size:** 1 1/8" high by 2 1/2" wide (on each side)

**Color choices:** Green (G), red (R), blue (B) or smoke (SM) with matching lids

**Packaging:** Individually polybagged; 24/13 lbs.

**Production time:** 10 to 15 working days

**Rush service:** Usually available (contact customer service)

**Washing instructions:** Hand washing only recommended



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Telephone: (888) 321-3675 (toll free) or (505) 314-2977

Fax: (800) 809-8386 (toll free fax) or (505) 314-2982

E-mail: Sales@SportsBottleWorld.com

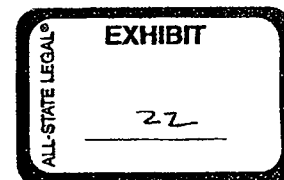
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TriForest Ent v. Nalgene

Opposition No. 91165809

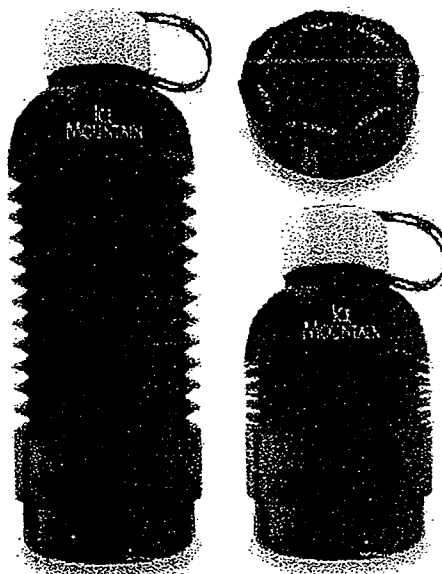
Serial No. 76/572,253

Applicant Nalge Nunc Int'l Inc Exhibit 22





# #5081: The Rx 21 oz. Collapsible Water Bottle



- ⊗ Collapsible
- ⊗ Holds a 7-day medication supply
- ⊗ A terrific traveling companion

Here's a neat traveling companion ... a nifty translucent collapsible water bottle. Great for storage purposes on trips, but it also has another feature which is not so readily apparent. Discreetly attached to the base of this bottle is a seven-day pillbox! Simply put in a supply of medication, pack the bottle in a suitcase and be off! Once on vacation, one only has to expand the bottle and add water. The recipients of this thoughtful gift will truly be appreciative. And more than likely they will be toting your advertising all over the country and even the world with them. A great reminder on a daily basis of your services!

Item Number	120	240	540	1,020	2,520
5081	\$5.75	\$5.50	\$5.25	\$5.00	\$4.75

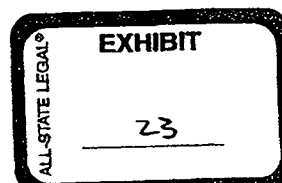
**Set-up charge:** \$40.00  
**Running charges:** Price includes one-color, one-location imprint (multiple color imprint not available)  
**Dimensions:** 8 1/4" by 3" diameter  
**Imprint area size:** 2" wide by 9/16" high  
**Color choices:** Translucent red (TrR) or blue (TrB)  
**Packaging:** Gift box; 60/24 lbs.  
**Production time:** 10 to 12 working days  
**Rush service:** Usually available (contact customer service)  
**Washing instructions:** Hand washing only recommended



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 Telephone: (888) 321-3675 (toll free) or (505) 314-2977  
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TriForest Ent v. Nalgene  
 Opposition No. 91165809  
 Serial No. 76/572,253  
 Applicant Nalge Nunc Int'l Inc Exhibit 23



## #5196: The Outfitter 24 oz. Polycarbonate Sports Bottle



- Unique sipper top
- Contoured sides
- Beautiful translucent colors

Fit your hands around this neat polycarbonate bottle! Its great contour shape will complete any outfit anywhere! Whether you're working out, or working in the great outdoors or getting fit on the nearest or farthest trails, the Outfitter 24 ounce polycarbonate bottle is perhaps the right choice. Just unscrew the lid to reveal the uniquely designed sipper top. Use the tethered lid to secure the bottle to a belt, backpack or bag and off you go! It will hold up to the toughest treatment and still proclaim your company's virtues. It's a winner at a great price!

Item Number	150	250	500	1,000	2,500
5196	\$3.25	\$3.05	\$2.95	\$2.85	\$2.75

**Set-up charge:** \$45.00 per color

**Running charges:** Price includes one-color, one-location imprint; each additional color add \$ .25 per sports bottle

**Dimensions:** 8 1/2" high by 3" diameter

**Imprint area size:** 1 3/4" diameter

**Color choices:** Blue (B), red (R) or clear (CL)

**Packaging:** Individually polybagged; 48/22 lbs.

**Production time:** 10 to 15 working days

**Rush service:** Usually available (contact customer service)

**Washing instructions:** Hand washing only recommended



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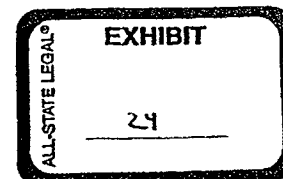
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TriForest Ent v. Nalgene

Opposition No. 91165809

Serial No. 76/572,253

Applicant Nalge Nunc Int'l Inc Exhibit 24



## #5177: The Rx 16 oz. Water Bottle



- ⊗ Seven-day pill box
- ⊗ Detaches from bottom
- ⊗ Great for traveling or daily use
- ⊗ Terrific imprint area

Just what the doctor ordered, literally! This bottle has a base which detaches from the bottom to reveal a clever seven-day pill box. No one would ever guess just from looking at it. Perfect for traveling or everyday use as a reminder or incentive. The generous imprint area guarantees great expression of your logo or advertising message. And because this is such a handy item, and your customers will be keeping it close by on a daily basis, they will always be reminded of your products or services.

Item Number	120	240	540	1,020	2,520
5177	\$5.50	\$5.25	\$5.00	\$4.75	\$4.50

Set-up charge: \$40.00

Running charges: Price includes one-color, one-location imprint (multiple color imprint not available)

Dimensions: 7 1/8" by 3" diameter

Imprint area size: Each side: 2 1/2" by 2 1/2"  
Full wrap: 8 1/2" by 2 1/2"

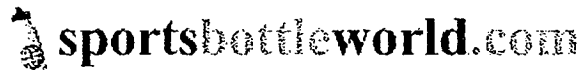
Color choices: Translucent red (TrR) or blue (TrB)

Packaging: Gift box; 60/23 lbs.

Production time: 10 to 12 working days

Rush service: Usually available (contact customer service)

Washing instructions: Hand washing only recommended



2616 Mesilla Street NE, Suite 1, Albuquerque, NM 87110

Telephone: (888) 321-3675 (toll free) or (505) 314-2977

Fax: (800) 809-8386 (toll free fax) or (505) 314-2982

E-mail: Sales@SportsBottleWorld.com

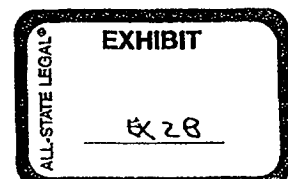
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TriForest Ent v. Nalgene

Opposition No. 91165809

Serial No. 76/572,253

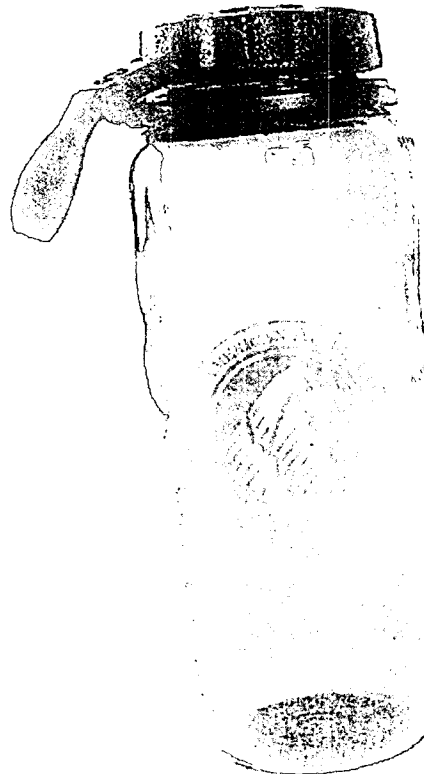
Applicant Nalgene Nunc Int'l Inc Exhibit 28





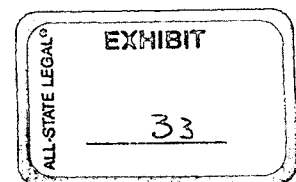
TriForest Ent v. Nalgene  
Opposition No. 91165809  
Serial No. 76/572,253  
Applicant Nalge Nunc Int'l Inc Exhibit 32

Water Bottle - 32 fluid ounces  
by American Alpine Club

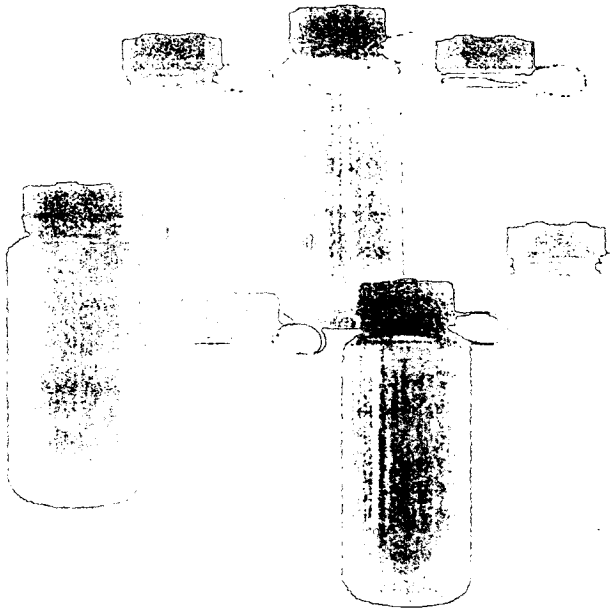


Case Window

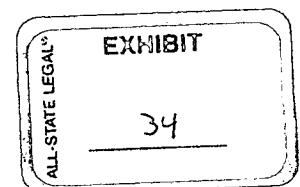
TriForest Ent v. Nalgene  
Opposition No. 91165809  
Serial No. 76/572,253  
Applicant Nalge Nunc Int'l Inc Exhibit 33

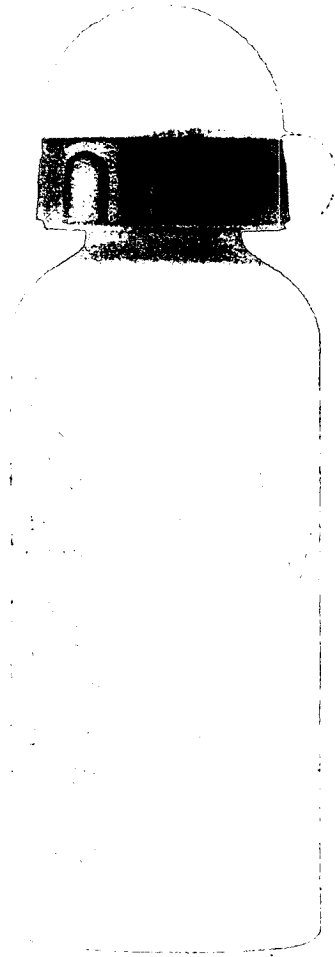


EXAN

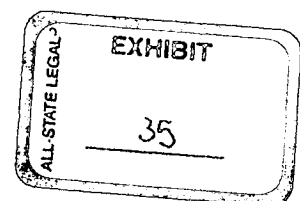


TriForest Ent v. Nalgene  
Opposition No. 91165809  
Serial No. 76/572,253  
Applicant Nalge Nunc Int'l Inc Exhibit 34



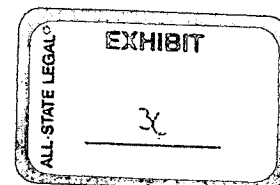


TriForest Ent v. Nalgene  
Opposition No. 91165809  
Serial No. 76/572,253  
Applicant Nalge Nunc Int'l Inc Exhibit 35





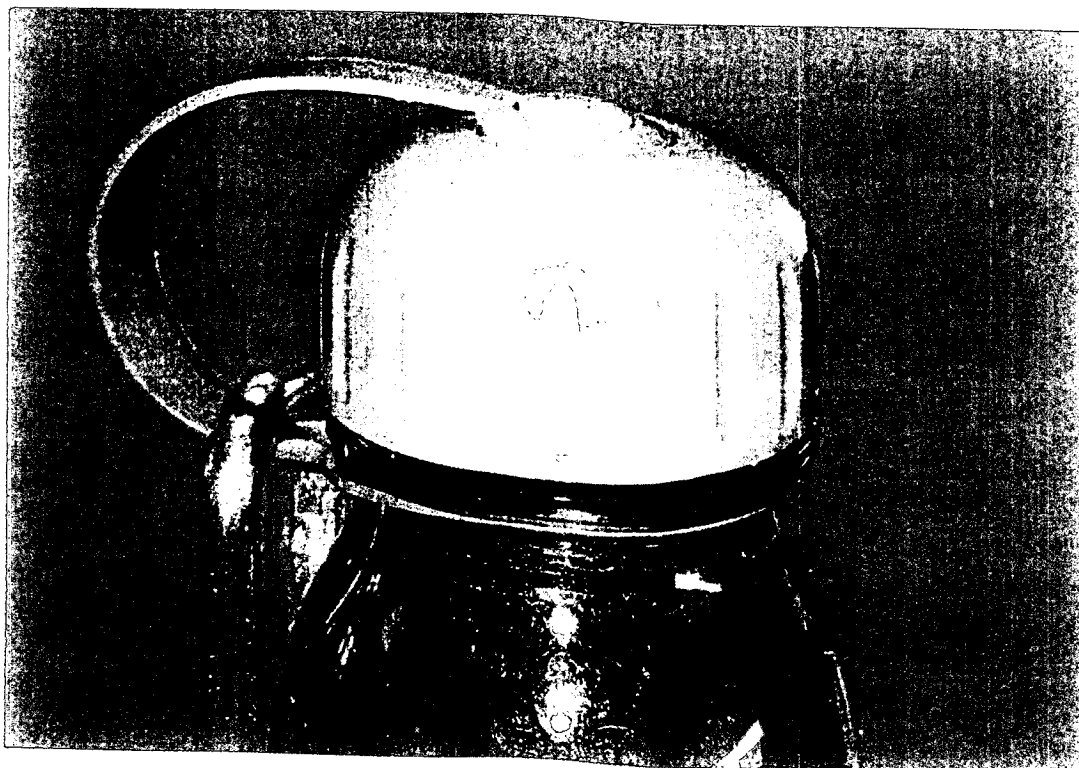
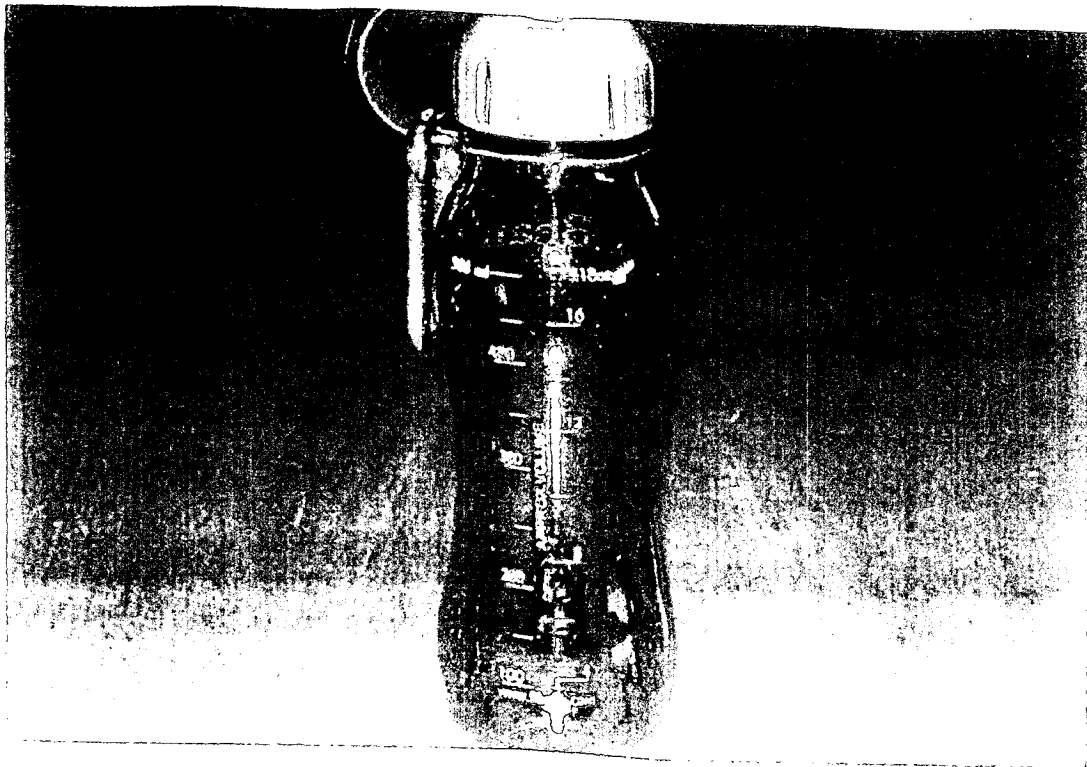
TriForest Ent v. Nalgene  
Opposition No. 91165809  
Serial No. 76/572,253  
Applicant Nalge Nunc Int'l Inc Exhibit 34



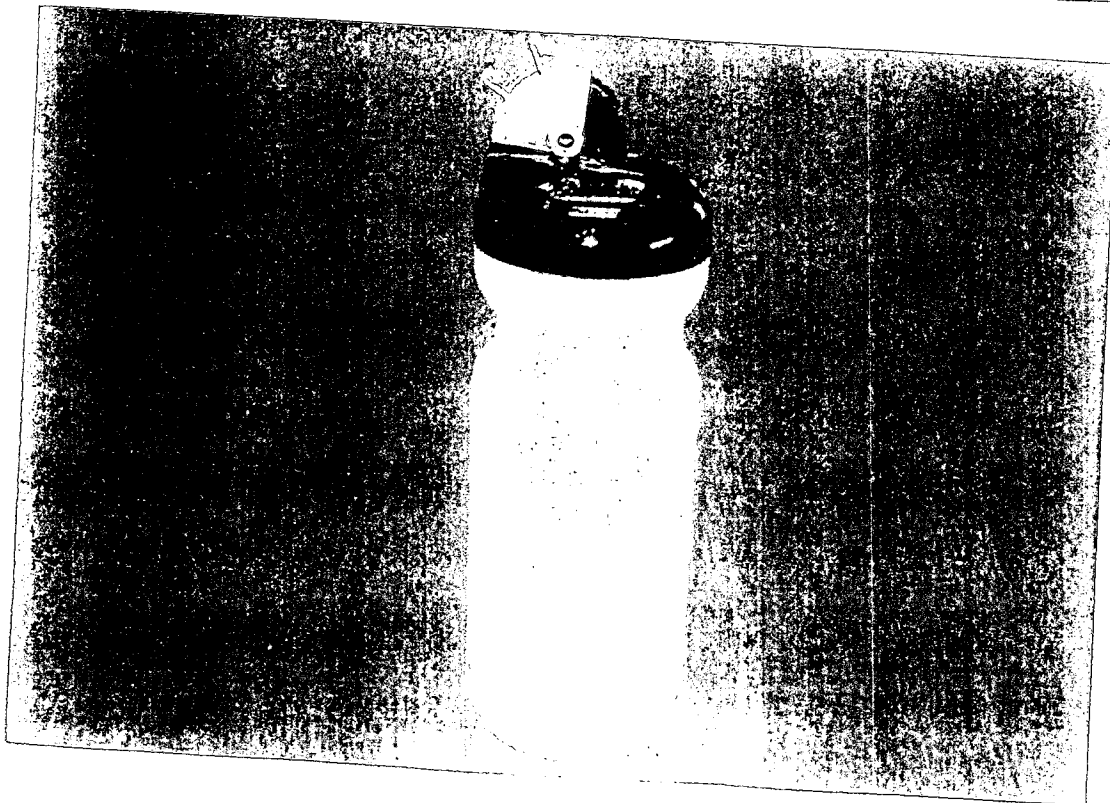
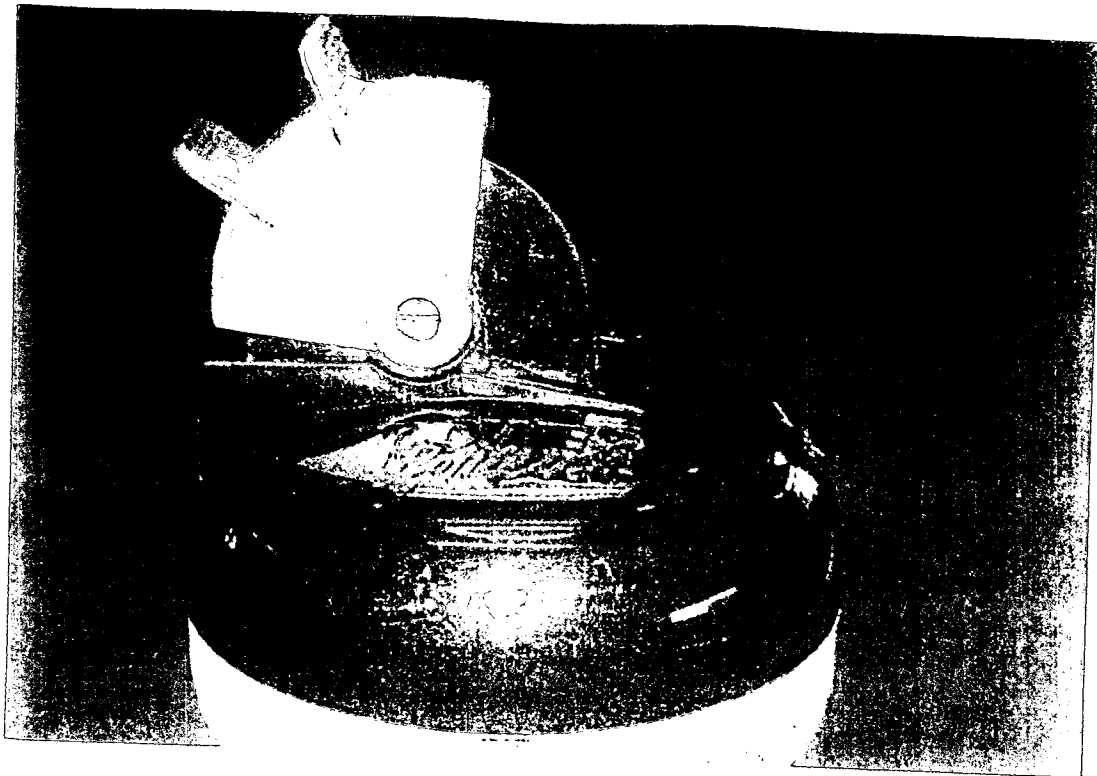




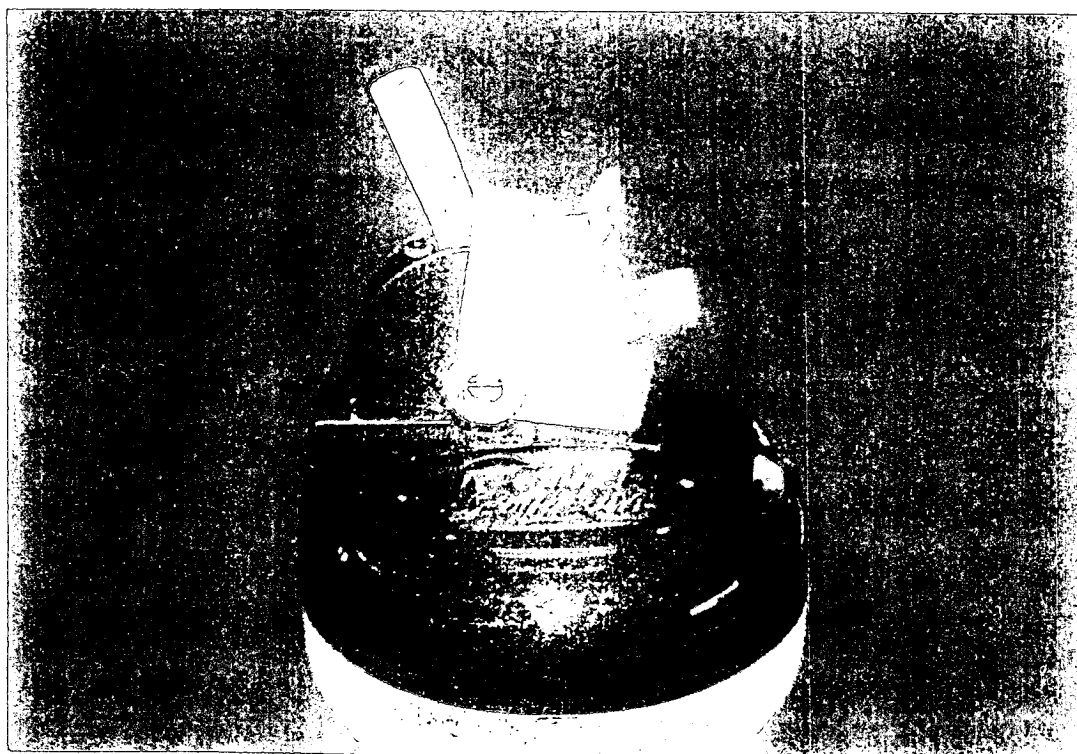
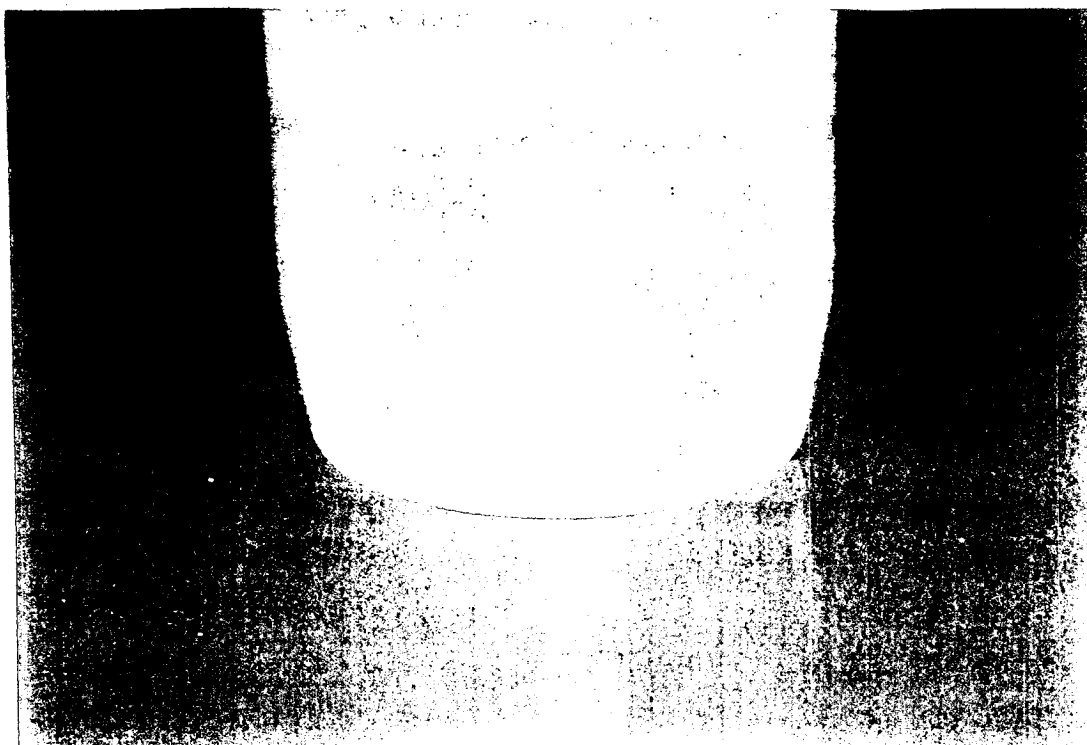
TriForest Ent v. Nalgene  
Opposition No. 91165809  
Serial No. 76/572,253  
Applicant Nalge Nunc Int'l Inc Exhibit 37 - 1



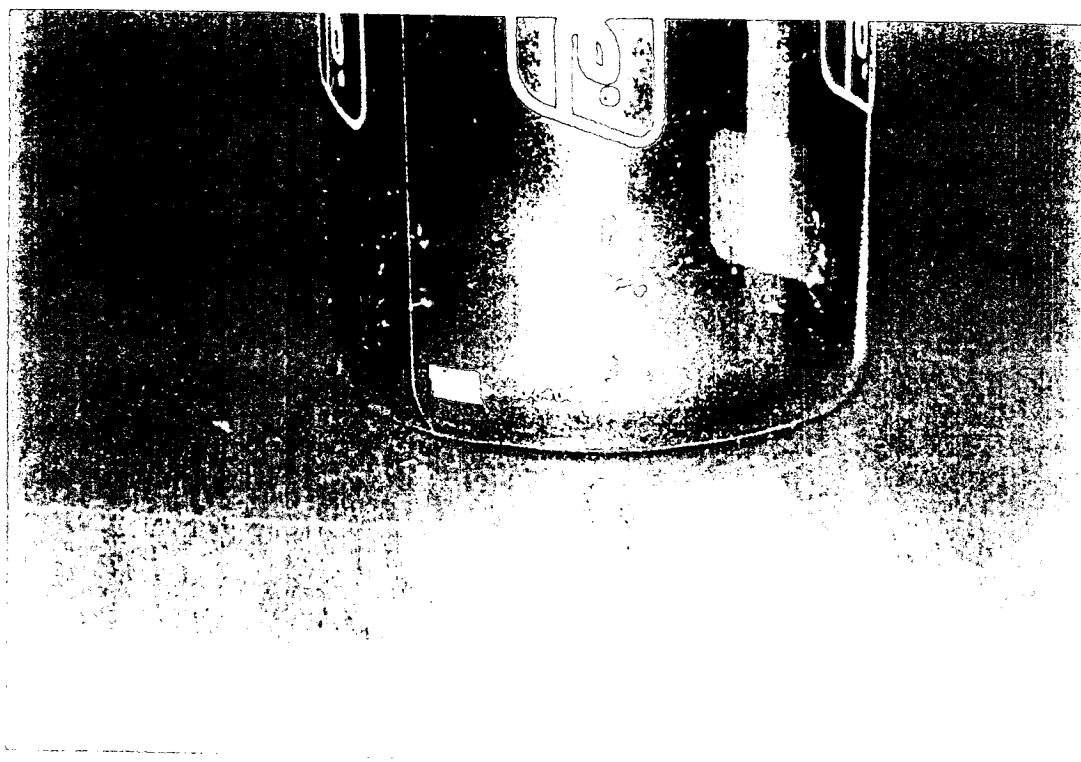
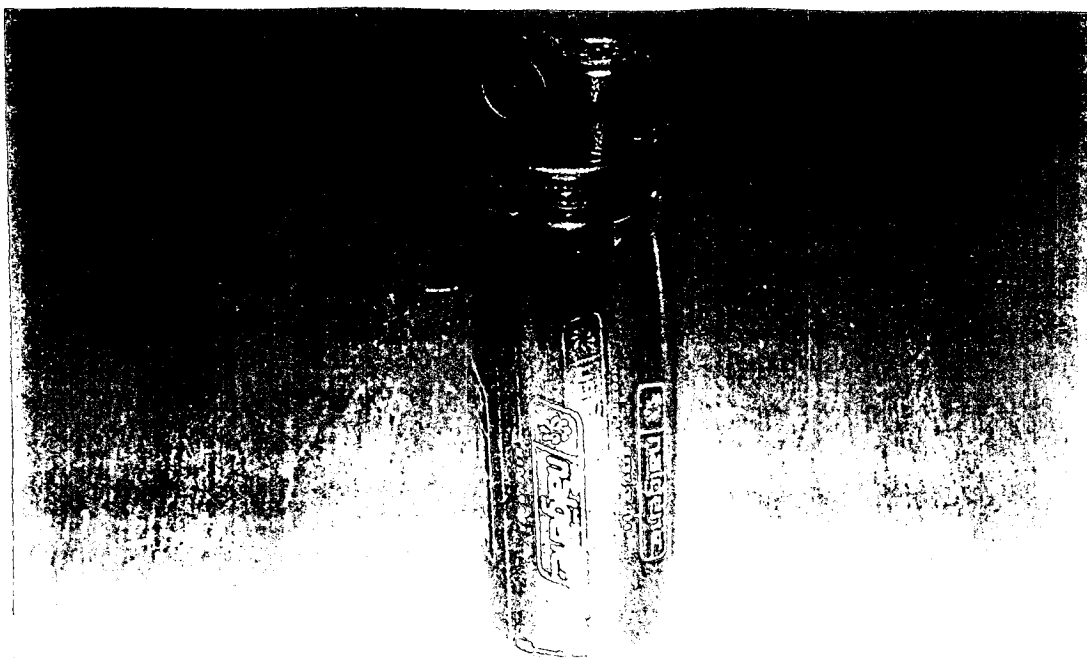
TriForest Ent v. Nalgene  
Opposition No. 91165809  
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Applicant Nalge Nunc Int'l Inc Exhibit 39



TriForest Ent v. Nalgene  
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Applicant Nalge Nunc Int'l Inc Exhibit 41 - 1



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Applicant Nalge Nunc Int'l Inc Exhibit 41-2



TriForest Ent v. Nalgene  
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Applicant Nalge Nunc Int'l Inc Exhibit 42-1